9 FAM 41.31 Notes

(TL:VISA-268; 04-26-2001)

9 FAM 41.31 N1 Importance of Facilitating International Travel

(TL:VISA-268; 04-26-2001)

a. U.S. Government policy is to facilitate and promote international travel and the free movement of people of all nationalities to the United States both for the cultural and social value to the world and for economic purposes.

b. Consular officers shall expedite applications for and issuance of a visitor visa so long as issuance of the visa is consistent with the requirements of the applicable laws and regulations and the consular officer is satisfied that the nonimmigrant visa applicants have overcome the presumption of intending immigration. The consular officer may give particular attention to applicants traveling to the United States to attend conferences, conventions, or meetings on specific dates.

c. When interviewing applicants classifiable as B-1, particularly those coming to the United States "to make purchases," consular officers shall determine whether the applicants might be referred to the economic officer for a possible commercial invitation or interview. In appropriate cases, recipients of B-1 visas may be given the address of the Field Office of the Department of Commerce nearest the alien's destination in the United States, and a brief summary of the services provided foreign business people. This information may be obtained from the commercial section at posts having such facilities. [See 9 FAM 41.121 Notes concerning submission to the Department of cases of doubtful eligibility and 22 CFR 40.*301* and 9 FAM 40.*301* Notes concerning INA 2l2(d)(3)(A) waiver procedures.

9 FAM 41.31 N2 Factors in Determining Entitlement to Temporary Visitor Classification

(TL:VISA-14; 8-30-88)

a. In determining whether visa applicants are entitled to temporary visitor classification, consular officers must assess whether the applicants:

(1) Have a residence in a foreign country which they do not intend to abandon;

(2) Intend to enter the United States for a period of specifically limited duration; and

(3) Seek admission for the sole purpose of engaging in legitimate activities relating to business or pleasure.

b. In making these assessments, the consular officer may wish to consider whether the applicants generally meet the criteria listed below.

9 FAM 41.31 N2.1 Adequate Funds to Avoid Unlawful Employment

(TL:VISA-2; 8-30-87)

The arrangements which the applicant has made for defraying the expenses of the visit and return abroad must be adequate to obviate the need for obtaining employment in the United States.

9 FAM 41.31 N2.2 Credibility of Support Arrangements

(TL:VISA-2; 8-30-87)

If the financial arrangements made by the applicant depend on assurances that relatives or friends in the United States will provide all or part of the applicant's support, there must be forceful and compelling ties between the applicant and the sponsor which would lend credibility to the sponsor's undertaking.

9 FAM 41.31 N2.3 Specific and Realistic Plans

(TL:VISA-2; 8-30-87)

The applicant must have specific and realistic plans (not just vague and uncertain intentions) for the entire period of the contemplated visit.

9 FAM 41.31 N2.4 Period of Time in the United States Consistent With Purpose of Trip

(TL:VISA-2; 8-30-87)

The period of time projected for the visit must be consistent with the stated purpose of the trip and the applicant must establish with reasonable certainty that departure from the United States will take place upon completion of the temporary visit. Although "temporary" is not specifically defined by either statute or regulation, it generally signifies a limited period of stay. The fact that the period of stay in a given case may exceed 6 months or a year is not in itself controlling, provided the consular officer is satisfied that the intended stay actually has a time limitation and is not indefinite in nature.

9 FAM 41.31 N2.5 Alien's Understanding of Length of Stay

(TL:VISA-2; 8-30-87)

The applicant's proposed length of stay in the United States must be consistent within the time-frame limitation offered by the relatives or friends the applicant will be visiting.

9 FAM 41.31 N2.6 Ties Abroad

(TL:VISA-2; 8-30-87)

The applicant must be able to show reasonably good and permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations which will indicate a strong inducement to return abroad.

9 FAM 41.31 N2.7 Evidence of Support for Family Abroad

(TL:VISA-2; 8-30-87)

Consular officers shall elicit a satisfactory explanation about provisions for support of the spouse and children while the applicant is in the United States in cases where the applicant is the family's principal wage earner. In the event of a proposed extended temporary stay, the applicant shall be requested to provide the reasons for the lengthy family separation and evidence of the employer's awareness of a contemplated extended absence from work.

9 FAM 41.31 N3 Criteria Not Established For Nonimmigrant Status

(TL:VISA-268; 04-26-2001)

The criteria listed under *9 FAM 41.31* N2 are intended to serve only as general guidelines. Clearly, the presence or absence of any of those factors will not necessarily provide conclusive evidence of the alien's real intent. If the consular officer, after consideration of those criteria and any other pertinent factors, is not satisfied of the applicant's intent to return abroad or to abide by the terms of the nonimmigrant status, the officer is required by law to refuse the visa. However, if it appears that the visa refusal can be overcome by submission of additional evidence, the applicant shall be so informed. [See sec. 9 FAM 41.121 Notes.]

9 FAM 41.31 N3.1 Doubtful Cases Not Resolved by Offer to Leave Dependent Abroad

(TL:VISA-2; 8-30-87)

The consular officer's doubts about an alien's intent to return abroad cannot be resolved by the alien's offer or willingness to leave a child, spouse, or other dependent abroad.

9 FAM 41.31 N3.2 Mere Suspicion Not Reason for Refusal

(TL:VISA-14; 8-30-88)

Suspicion that an alien, after admission, may be induced to attempt to remain in the United States by more favorable living conditions is not a sufficient ground to refuse a visa so long as the alien's current intent is to return to a foreign residence.

9 FAM 41.31 N3.3 Unlawful Activity While in Visitor Status

(TL:VISA-2; 8-30-87)

The law contemplates that an alien is traveling to the United States for legal purposes. Therefore, an application for a visitor visa shall be denied in those cases where the consular officer has reason to believe or knows that, while in the United States as a visitor, the applicant will engage in unlawful or criminal activities.

9 FAM 41.31 N3.4 Incidental Expenses or Remuneration

(TL:VISA-268; 04-26-2001)

A nonimmigrant in B-1 status may not receive a salary from a United States source for services rendered in connection with his or her activities in the United States. A U.S. source, however, may provide the alien with an expense allowance or reimbursement for expenses incidental to the temporary stay. Incidental expenses may not exceed the actual reasonable expenses the alien will incur in traveling to and from the event, together with living expenses the alien reasonably can be expected to incur for meals, lodging, laundry, and other basic services.

9 FAM 41.31 N4 Aliens Traveling to the United States as Visitors for Business

(TL:VISA-268; 04-26-2001)

a. Aliens who desire to enter the United States for business and who are otherwise eligible for visa issuance, may be classifiable as nonimmigrant B-1 visitors provided they meet the criteria described in *9 FAM 41.31* N5 through *9 FAM 41.31* N8. Engaging in business contemplated for B-1 visa classification generally entails business activities other than the performance of skilled or unskilled labor. Thus, the issuance of a B-1 visa is not intended for the purpose of obtaining and engaging in employment while in the United States. Specific circumstances or past patterns have been found to fall within the parameters of this classification and are listed below.

b. The consular officer may encounter a case involving temporary employment in the United States which does not fall within the categories listed below. The consular officer shall submit such cases to CA/VO/L/A in accordance with the procedures in *9 FAM 41.31* N9 for an advisory opinion to ensure uniformity and proper application of the law.

9 FAM 41.31 N5 Aliens Traveling to the United States to Engage in Commercial Transactions, Negotiations, Consultations, Conferences, etc.

(TL:VISA-268; 04-26-2001)

Aliens *shall be classified B-1 visitors for business, if otherwise eligible, if they are* traveling to the United States to:

(1) Engage in commercial transactions which do not involve gainful employment in the United States (such as a merchant who takes orders for goods manufactured abroad);

(2) Negotiate contracts;

(3) Consult with business associates;

(4) Litigate;

(5) Participate in scientific, educational, professional or business conventions, conferences, or seminars; or

(6) Undertake independent research.

9 FAM 41.31 N6 Aliens Coming to the United States to Pursue Employment Incidental to Their Professional Business Activities

(TL:VISA-14; 8-30-88)

The statutory terms of INA 101(a)(15)(B) specifically exclude from this classification aliens coming to the United States to perform skilled or unskilled labor. Aliens coming to the United States for the purpose of pursuing employment which does not qualify them for A, C, D, E, G, H, I, J, L, or NATO status must be classified as immigrants. Exception is made for aliens who may be eligible for B-1 business visas provided they meet the criteria of one of the categories listed below.

9 FAM 41.31 N6.1 Members of Religious and Charitable Activities

9 FAM 41.31 N6.1-1 Ministers on Evangelical Tour

(TL:VISA-268; 04-26-2001)

Ministers of religion proceeding to the United States to engage in an evangelical tour who do not plan to take an appointment with any one church, and who will be supported by offerings contributed at each evangelical meeting. [See 9 FAM 41.31 N14 and 9 FAM 41.113 PN*14.2*.]

9 FAM 41.31 N6.1-2 Ministers of Religion Exchanging Pulpits

(TL:VISA-14; 8-30-88)

Ministers of religion temporarily exchanging pulpits with U.S. counterparts, who will continue to be reimbursed by the foreign church and will draw no salary from the host church in the United States.

9 FAM 41.31 N6.1-3 Missionary Work

(TL:VISA-14; 8-30-88)

Members of religious denominations, whether ordained or not, entering the United States temporarily for the sole purpose of performing missionary work on behalf of a denomination, so long as the work does not involve the selling of articles or the solicitation or acceptance of donations and provided the minister will receive no salary or remuneration from United States sources other than an allowance or other reimbursement for expenses incidental to the temporary stay. “Missionary work” for this purpose may include religious instruction, aid to the elderly or needy, proselytizing, etc. It does not include ordinary administrative work, nor shall it be used as a substitute for ordinary labor for hire.

9 FAM 41.31 N6.1-4 Participants in Voluntary Service Programs

(TL:VISA-268; 04-26-2001)

a. Aliens participating in a voluntary service program benefiting U.S. local communities, who establish that they are members of and have a commitment to a particular recognized religious or nonprofit charitable organization and that no salary or remuneration will be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteers’ stay in the United States.

b. A “voluntary service program” is an organized project conducted by a recognized religious or nonprofit charitable organization to provide assistance to the poor or the needy or to further a religious or charitable cause. The program may not, however, involve the selling of articles and/or the solicitation and acceptance of donations. The burden that the voluntary program meets the INS definition of “voluntary service program” is placed upon the recognized religious or nonprofit charitable organization, which must also meet other criteria set out in the INS Operating Instructions with regard to voluntary workers.

c. The consular officer must assure that the written statement issued by the sponsoring organization is attached to the *passport containing the* visa for presentation to the INS officer at the port of entry. The written statement will be furnished by the alien participating in a service program sponsored by the religious or nonprofit charitable organization and must contain INS required information such as:

(1) The volunteer’s name and date and place of birth;

(2) The foreign permanent residence address;

(3) The name and address of initial destination in the United States; and

(4) Anticipated duration of assignment.

[See 9 FAM 41.31 *N6.2 Members of Board of Directors of U.S. Corporation, and 9 FAM 41.31 N14*.]

9 FAM 41.31 N6.2 Members of Board of Directors of U.S. Corporation

(TL:VISA-14; 8-30-88)

An alien who is a member of the board of directors of a U.S. corporation seeking to enter the United States to attend a meeting of the board or to perform other functions resulting from membership on the board.

9 FAM 41.31 N6.3 Personal/Domestic Employees

9 FAM 41.31 N6.3-1 Personal/Domestic Employees of U.S. Citizens Residing Abroad

(TL:VISA-268; 04-26-2001)

Personal or domestic *employees* who accompany or follow to join U.S. citizen employers who have a permanent home or are stationed in a foreign country, and who are visiting the United States temporarily, provided the employer-employee relationship existed prior to the commencement of the employer's visit to the United States.

9 FAM 41.31 N6.3-2 Personal/Domestic Employees of U.S. Citizens on Temporary Assignment in United States

(TL:VISA-268; 04-26-2001)

a. Personal or domestic *employees* who are accompanying or following to join U.S. citizen employers temporarily assigned to the United States provided the consular officer is satisfied that:

(1) The employee has a residence abroad which he or she has no intention of abandoning;

(2) He and/or she has been employed abroad by the employer as a personal or domestic servants for at least six months prior to the date of the employer's admission to the United States or,

(3) In the alternative, the employer can show that while abroad the employer has regularly employed a domestic servant in the same capacity as that intended for the applicant;

(4) The employee can demonstrate at least one year experience as a personal or domestic servant by producing statements from previous employers attesting to such experience; and

(5) The employee is in possession of an original contract or a copy of the contract, to be presented at the port of entry, showing original signatures of both the employer and the employee.

b. The U.S. citizen employer is subject to frequent international transfers lasting two years or more as a condition of the job as confirmed by the employer's personnel office, and is returning to the United States for a stay of no more than four years. The employer will be the only provider of employment to the *domestic employee*, and will provide the employee free room and board and a round trip airfare as indicated under the terms of the employment contract; and

c. The required employment contract has been signed and dated by the employer and employee and contains a guarantee from the employer that, in addition to the provisions listed in item (b) above, the employee will receive the minimum or prevailing wages whichever is greater for an eight hour work-day, and any other benefits normally required for U.S. domestic workers in the area of employment, and will be given at least two weeks notice of the employer's intent to terminate the employment. The employment contract also indicates that the employee will give not more than two weeks notice of intent to leave such employment.

9 FAM 41.31 N6.3-3 Personal Employees of Foreign Nationals in Nonimmigrant Status

(TL:VISA-268; 04-26-2001)

Personal or domestic *employees* who accompany or follow to join employers who seek admission into or are already in the United States in B, E, F, H, I, J, L, M, *O, P,* or *Q* nonimmigrant status, provided:

(1) The employee has a residence abroad which he or she has no intention of abandoning (notwithstanding the fact that the employer may be in a non immigrant status which does not require such a showing);

(2) The employee can demonstrate at least one year's experience as a personal or domestic *employee*, and

(3) The employee has been employed abroad by the employer as a personal or domestic *employee*, for at least one year prior to the date of the employer's admission to the United States; or

(4) If the employee-employer relationship existed immediately prior to the time of visa application, the employer can demonstrate that he or she has regularly employed (either year-round or seasonally) personal or domestic *employees* over a period of several years preceding the domestic *employee's* visa application for a nonimmigrant B-1 visa.

(5) The employer and the employee have signed an employment contract which contains statements that the employer guarantees the employee the minimum or prevailing wages, whichever is greater, and free room and board and will be the only provider of employment to the *employee* [See 9 FAM 41.31 N14.]

(6) *The employer must pay the domestic initial travel expenses to the United States, and subsequently to the employer's onward assignment, or to the employee's country of normal residence at the termination of the assignment.*

9 FAM 41.31 N6.3-4 Personal Employees/Domestics of Lawful Permanent Residents (LPRs)

(TL:VISA-268; 04-26-2001)

Personal employees of all lawful permanent residents (LPRs), including conditional permanent residents and LPRs who have filed an Application to Preserve Residence for Naturalization Purposes (Form N-470), must obtain permanent resident status, as it is contemplated that the employing LPR is a resident of the United States.

9 FAM 41.31 N6.3-5 Source of Payment to B-1 Personal Employees/Domestics

(TL:VISA-268; 04-26-2001)

The source of payment to a B-1 personal or domestic *employee* or the place where the payment is made or where the bank is located is not relevant.

9 FAM 41.31 N6.4 Professional Athletes

(TL:VISA-14; 8-30-88)

a. Professional athletes, such as golfers and auto racers, who receive no salary or payment other than prize money for their participation in a tournament or sporting event.

b. Athletes or team members who seek to enter the United States as members of a foreign based team in order to compete with another sports team provided:

(1) The foreign athlete and the foreign sports team have their principal place of business or activity in a foreign country;

(2) The income of the foreign based team and the salary of its players are principally accrued in a foreign country; and

(3) The foreign based sports team is a member of an international sports league or the sporting activities involved have an international dimension.

c. Amateur hockey players who are asked to join a professional team during the course of the regular professional season or playoffs for brief try-outs. The players are draft choices who have not signed professional contracts, but have signed a memorandum of agreement with a National Hockey League-parent team. Under the terms of the agreement the team will provide only for incidental expenses such as round-trip fare, hotel room, meals, and transportation. At the time of the visa application or application for admission to the United States the players must provide a copy of the memorandum of agreement and a letter from the NHL team giving the details of the try-outs or, if an agreement is not available at that time, a letter from the NHL team stating that such an agreement has been signed and giving the details of the try-out.

9 FAM 41.31 N6.5 Yacht Crewmen

(TL:VISA-14; 8-30-88)

Crewmen of a private yacht who are able to establish that they have a residence abroad which they do not intend to abandon, regardless of the nationality of the private yacht, provided the yacht will be sailing out of a foreign home port and cruising in U.S. waters for more than twenty-nine days.

9 FAM 41.31 N6.6 Coasting Officers

(TL:VISA-268; 04-26-2001)

See 9 FAM 41.41 N*4* for aliens seeking to enter the United States as “coasting officers.”

9 FAM 41.31 N6.7 Investor Seeking Investment in United States

(TL:VISA-14; 8-30-88)

An alien seeking investment in the United States which would qualify him and/or her for status as an E-2 investor. Such alien is precluded from performing productive labor or from actively participating in the management of the business prior to being granted E-2 status.

9 FAM 41.31 N6.8 Horse Races

(TL:VISA-14; 8-30-88)

An alien coming to the United States to perform services on behalf of an employer of the alien's nationality as a jockey, sulkey driver, trainer, or groomer, is not allowed to work for any other foreign or U.S. employer.

9 FAM 41.31 N6.9 Outer Continental Shelf Employees

(TL:VISA-14; 8-30-88)

The Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) were enacted on September 18, 1978. 43 USC 1356 of OCSLA directs, that with specified exceptions, all units operating on the Outer Continental Shelf (OCS) must employ only U.S. citizens or lawful permanent resident aliens as members of the regular complement of the unit. Subsequently, the Coast Guard issued regulations, (33 CFR 141), which became effective on April 5, 1983. The regulations contain guidelines concerning exemptions available to units operating on the OCS. Not included are non-members of the regular complement of a unit such as specialists, professionals, or other technically trained personnel called in to handle emergencies or other temporary operations, and extra personnel on a unit for training or for specialized operation, i.e., construction, alteration, well logging, or unusual repairs or emergencies.

9 FAM 41.31 N6.9-1 B-1 Visa Applicants

(TL:VISA-268; 04-26-2001)

The citizenship requirement under the OCSLA and the Coast Guard regulations may be waived in certain circumstances specified in the Coast Guard's regulations at 33 CFR 141. It is therefore mandatory that applications for B-1 visitor visas for business from aliens destined to the Outer Continental Shelf be submitted to the Department *(CA/*VO/L/A) for an advisory opinion.

9 FAM 41.31 N6.9-2 Visa Notation

(TL:VISA-268; 04-26-2001)

If issuance of visa is approved, the consular officer annotates "OCS" on the *machine readable* visa *(MRV).*

9 FAM 41.31 N6.9-3 Requests for Exemption From Restrictions on Alien Employment

(TL:VISA-14; 8-30-88)

Employers who wish to employ persons other than citizens of the United States or permanent resident aliens as part of the regular complement of the unit must request, in writing, an exemption from the restrictions on employment in accordance with specific Coast Guard regulations. The request for the exemption must be addressed to:

Commandant (G-MVP)
U.S. Coast Guard Headquarters
2100 2nd Street, SW
Washington, D.C. 20593

9 FAM 41.31 N7 Other Business Activities Classifiable B-1

(TL:VISA-14; 8-30-88)

While the categories listed below generally may be classified under the proper applicable nonimmigrant class, i.e., A, E, H, F, L or M visas, consular officers may issue B-1 visas to otherwise eligible aliens under the criteria provided below.

9 FAM 41.31 N7.1 Commercial or Industrial Workers

(TL:VISA-14; 8-30-88)

a. An alien coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services. However, in such cases the contract of sale must specifically require the seller to provide such services or training and the visa applicant must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source.

b. These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant except for an alien who is applying for a B-1 visa for the purpose of supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work.

9 FAM 41.31 N7.2 Foreign Airline Employees

(TL:VISA-14; 8-30-88)

Aliens who seek to enter the United States for employment with a foreign airline engaged in international transportation of passengers and freight in an executive, supervisory, or highly technical capacity who meet the requirements for E visa classification but are precluded from entitlement to treaty trader E-1 classification solely because there is no treaty of friendship, commerce, and navigation in effect between the United States and the country of the aliens' nationality or because they are not nationals of the airline's country of nationality. Furthermore, employees of foreign airlines coming to the United States to pick-up aircraft may also be documented as B-1 visitors in that they are not transiting the United States and are not admissible as crewmen. Such applicants, however, must present a letter from the foreign airline headquarters branch verifying the employment and official capacity of the applicants in the United States.

9 FAM 41.31 N7.3 Clerkship

(TL:VISA-14; 8-30-88)

Except as in the cases described below, aliens who wish to obtain hands-on clerkship experience are not deemed to fall within B-1 visa classification.

9 FAM 41.31 N7.3-1 Medical

(TL:VISA-14; 8-30-88)

An alien who is studying at a foreign medical school and seeks to enter the United States temporarily in order to take an "elective clerkship" at a U.S. medical school's hospital without remuneration from the hospital. (An "elective clerkship" affords practical experience and instructions in the various disciplines of medicine under the supervision and direction of faculty physicians at a U.S. medical school's hospital as an approved part of the alien's foreign medical school education.)

9 FAM 41.31 N7.3-2 Business or Other Professional or Vocational Activities

(TL:VISA-268; 04-26-2001)

An alien who is coming to the United States merely and exclusively to observe the conduct of business or other professional or vocational activity may be classified B-1, provided the alien pays for his or her own expenses. However, aliens, often students, who seek to gain practical experience must qualify under INA 101(a)(15)(H), (L), or (J), when an appropriate exchange visitors program exists.

9 FAM 41.31 N7.4 Participants in Foreign Assistance Act Program

(TL:VISA-14; 8-30-88)

An alien invited to participate in any program furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961, 75 Stat. 424.

9 FAM 41.31 N7.5 Peace Corps Volunteer Trainers

(TL:VISA-14; 8-30-88)

An alien invited to participate in the training of Peace Corps volunteers or coming to the United States under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Stat. 612), unless the alien qualifies for A classification. [See 9 FAM 41.113 PN8 for notation to be inserted on any visa issued under this legislation.]

9 FAM 41.31 N7.6 Internship with UNITAR

(TL:VISA-14; 8-30-88)

Participants in the United Nations Institute for Training and Research (UNITAR) program of internship for training and research who are not employees of foreign governments.

9 FAM 41.31 N7.7 Aliens Employed by Foreign or U.S. Exhibitors at International Fairs or Expositions

(TL:VISA-14; 8-30-88)

Aliens who are coming to the United States to plan, construct, dismantle, maintain, or be employed in connection with exhibits at international fairs or expositions may, depending upon the circumstances in each case, qualify for one of the following classifications.

9 FAM 41.31 N7.7-1 Foreign Government Officials

(TL:VISA-14; 8-30-88)

Aliens representing a foreign government in a planning or supervisory capacity and/or their immediate staffs are entitled to “A” classification if an appropriate note is received from their government, and if they are otherwise properly documented.

9 FAM 41.31 N7.7-2 Employees of Foreign Exhibitors

(TL:VISA-14; 8-30-88)

Employees of foreign exhibitors at international fairs or expositions who are not foreign government representatives and do not qualify for “A” classification ordinarily are classified B-1.

9 FAM 41.31 N7.7-3 Employees of U.S. Exhibitors

(TL:VISA-14; 8-30-88)

While alien employees of U.S. exhibitors or employers are not eligible for B-1 visas they may be classifiable as H-1 or H-2 temporary workers.

9 FAM 41.31 N8 Aliens Normally Classifiable H-1 or H-3

(TL:VISA-268; 04-26-2001)

There are cases in which aliens who qualify for H-1 or H-3 visas may more appropriately be classified as B-1 visa applicants in certain circumstances, e.g. a qualified H-1 or H-3 visa applicant coming to the United States to perform H-1 services or to participate in a training program for which the applicant will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to the alien’s temporary stay. For purposes of this Note, it is essential that the remuneration or source of income for services performed in the United States continue to be provided by the business entity located abroad, and that the alien meet the following criteria:

(1) With regard to foreign-sourced remuneration for services performed by aliens admitted under the provisions of INA 101(a)(15)(B), the Department has held that where a U.S. business enterprise or entity has a separate business enterprise abroad, salary paid by such foreign entity shall not be considered as coming from a “U.S. source.”

(2) In order for an employer to be considered a “foreign firm” the entity must have an office *abroad* and its payroll must be disbursed *abroad*. In order to qualify for a B-1 visa, the employee must customarily be employed by the foreign firm, the employing entity must pay the employee’s salary, and the source of the employee’s salary must be *abroad*.

(3) An alien classifiable H-2 shall be classified as such notwithstanding the fact that the salary or other remuneration is being paid by a source outside the United States. A nonimmigrant visa petition accompanied by an approved labor certification must be filed on behalf of the alien.

9 FAM 41.31 N8.1 Entertainers

(TL:VISA-268; 04-26-2001)

a. Except for the following cases, a member of the entertainment profession (professional entertainer) who seeks to enter the United States temporarily to perform services shall be accorded the appropriate H visa classification, regardless of the amount or source of compensation or whether the services will involve public appearance*(s)*.

b. The term “member of the entertainment profession” includes not only performing artists such as stage and movie actors, musicians, singers and dancers, but also other personnel such as technicians, electricians, make-up specialists, film crew members coming to the United States to produce films, etc.

9 FAM 41.31 N8.1-1 Participants in Cultural Programs or International Competitions

(TL:VISA-14; 8-30-88)

A professional entertainer may be classified B-1 if the entertainer:

(1) Is coming to the United States to participate only in a cultural program sponsored by the sending country;

(2) Will be performing before a nonpaying audience; and

(3) All expenses, including per diem, will be paid by the member’s government; or

(4) Is coming to the United States to participate in a competition for which there is no remuneration other than a prize (monetary or otherwise) and expenses.

9 FAM 41.31 N8.1-2 Still Photographers

(TL:VISA-14; 8-30-88)

The Immigration and Naturalization Service permits still photographers to enter the United States with B-1 visas for the purpose of taking photographs as long as they receive no income from a U.S. source.

9 FAM 41.31 N8.1-3 Musicians

(TL:VISA-14; 8-30-88)

An alien musician may be issued a B-1 visa, provided:

(1) The musician is coming to the United States in order to utilize recording facilities for recording purposes only;

(2) The recording will be distributed and sold only outside the United States; and

(3) No public performances will be given.

9 FAM 41.31 N8.1-4 Medical Doctor

(TL:VISA-14; 8-30-88)

A medical doctor otherwise classifiable H-1 as a member of a profession whose purpose for coming to the United States is to observe U.S. medical practices and consult with colleagues on latest techniques, provided no remuneration is received from a U.S. source and no patient care is involved. Failure to pass the Foreign Medical Graduate Examination (FMGE) is irrelevant in such a case.

9 FAM 41.31 N8.1-5 H-3 Trainees

(TL:VISA-268; 04-26-2001)

Aliens already employed abroad who are coming to undertake training who are classifiable as H-3 trainees, but who will continue to receive a salary from the foreign employer and will receive no salary or other remuneration from a United States source other than an expense allowance or other reimbursement for expenses (including room and board) incidental to the temporary stay. In addition, the fact that the training may last one year or more is not in itself controlling and it should not result in denial of *a* visa, provided the consular officer is satisfied that the intended stay in the U.S. is temporary, and that, in fact, there is a definite time limitation to such training.

9 FAM 41.31 N8.1-6 Artists

(TL:VISA-14; 8-30-88)

An artist coming to the United States to paint, sculpt, etc. who is not under contract with a U.S. employer and who does not intend to regularly sell such art-work in the United States.

9 FAM 41.31 N9 Advisory Opinion Required if Applicant not Clearly Identifiable B-1 Under N6, N7, or N8

(TL:VISA-14; 8-30-88)

a. An advisory opinion must be requested prior to the issuance of a B-1 visa in any case involving temporary employment in the U.S. other than as clearly set forth in 9 FAM 41.31 N6, 9 FAM 41.31 N7, or 9 FAM 41.31 N8. The Department recognizes that there are cases which might possibly be classifiable B-1, but which do not fit precisely within one of the classes described above. An advisory opinion is required in these cases to ensure uniformity and to avoid the issuance of a B-1 to an alien classifiable H-2 and thus subject to the safeguards of the petition and labor certification requirements.

b. The request may be made by telegram and must provide full details as to:

(1) Occupation of the applicant;

(2) Type of work to be performed;

(3) Place and duration of the contemplated employment;

(4) Source and amount of salary to be paid;

(5) Identity of United States and/or foreign employer;

(6) The consular officer’s reasons for believing B-1 classification appropriate; and

(7) Any other relevant information.

9 FAM 41.31 N10 Aliens Coming to the United States as Visitors for Pleasure

(TL:VISA-2; 8-30-87)

Aliens who wish to enter the United States temporarily for pleasure, and who are otherwise eligible to receive visas, may be classifiable as nonimmigrant B-2 visitors provided they meet the criteria listed below.

9 FAM 41.31 N10.1 Tourism or Family Visits

(TL:VISA-2; 8-30-87)

Aliens traveling to the United States for purposes of tourism or to make social visits to relative or friends.

9 FAM 41.31 N10.2 Medical Reasons

(TL:VISA-268; 04-26-2001)

Aliens coming to the United States for health purposes. [See 22 CFR 40.*11* and 22 CFR 40.*41*.]

9 FAM 41.31 N10.3 Participation in Social Events

(TL:VISA-2; 8-30-87)

Aliens participating in conventions, conferences, or convocation of fraternal, social or service organizations.

9 FAM 41.31 N10.4 Armed Forces Dependents

(TL:VISA-2; 8-30-87)

Dependents of an alien member of any branch of the U.S. Armed Forces temporarily assigned for duty in the United States.

9 FAM 41.31 N10.5 Dependents of Crewmen

(TL:VISA-2; 8-30-87)

Alien dependents of category “D” visa crewmen who are coming to the United States solely for the purpose of accompanying the principal alien.

9 FAM 41.31 N10.6 Short Course of Study

(TL:VISA-268; 04-26-2001)

Aliens coming to the United States primarily for tourism who also incidentally will engage in a short course of study during their visit. *The following annotation is to be placed in the 88-character field of the Machine Readable Visa (MRV):*

STUDY INCIDENTAL TO VISIT;
I-20 NOT REQUIRED

9 FAM 41.31 N10.7 Amateur Entertainers and Athletes

(TL:VISA-2; 8-30-87)

A person who is an amateur in an entertainment or athletic activity is, by definition, not a member of any of the profession associated with that activity. Thus, an amateur (or group of amateurs) who will not be paid for performances and will perform in a social and/or charitable context or as a competitor in a talent show, contest or athletic event is eligible for B-2 classification, even if the incidental expenses associated with the visit are reimbursed.

9 FAM 41.31 N11 Aliens Classifiable B-2 Visitors Under Special Circumstances

(TL:VISA-2; 8-30-87)

The following classes of aliens may be classified B-2 visitors under the following special circumstances.

9 FAM 41.31 N11.1 Alien Fiance(e)s

9 FAM 41.31 N11.1-1 Fiance(e) of U.S. Citizens or Permanent Resident Aliens

(TL:VISA-26X; XX-XX-2001)

An alien proceeding to the United States to marry a U.S. citizen is classifiable K-1 as a nonimmigrant under INA 101(a)15)(K). [See 22 CFR 41.81.] The prospective spouse of a U.S. citizen or lawful permanent resident may, however, be classified B-2 visitor in cases where the consular officer is satisfied that the fiance(e) intends to return to a residence abroad soon after the marriage. A B-2 visa may also be issued to an alien coming to the United States:

(1) Simply to meet the fiance(e)'s family;

(2) To become engaged;

(3) To make arrangements for the wedding; *or*

(4) To renew a relationship with the prospective spouse

9 FAM 41.31 N11.1-2 Fiance(e) of Nonimmigrant Alien in the United States

(TL:VISA-26X; XX-XX-2001)

Fiance(e)s who establish a residence abroad to which they intend to return, and who are otherwise qualified to receive visas, are eligible for B-2 visas if the purpose of the visit is to marry a nonimmigrant alien in the United States in a valid nonimmigrant F, H, J, L M, *O, P or Q* status. The consular officer shall advise the fiance(e) to apply soon after the marriage to the nearest office of Immigration and Naturalization Service *(INS*) to request a change in nonimmigrant status to that of the alien spouse.

9 FAM 41.31 N11.2 Proxy Marriage

(TL:VISA-14; 8-30-88)

A spouse married by proxy to an alien in the United States in a nonimmigrant status may be issued a visitor visa in order to join the spouse already in the United States. Upon arrival in the United States the joining spouse must apply to the INS for permission to adjust to the appropriate derivative status after consummation of the marriage.

9 FAM 41.31 N11.3 Spouse or Child of U.S. Citizen or Resident Alien

(TL:VISA-14; 8-30-88)

An alien spouse or child, including an adopted alien child, of a U.S. citizen or resident alien may be classified as a nonimmigrant B-2 visitor if the purpose of the travel is to accompany or follow to join the spouse or parent for a temporary visit.

9 FAM 41.31 N11.4 Derivative Status not Available to Certain Dependents of Nonimmigrants

(TL:VISA-14; 8-30-88)

Dependents of nonimmigrants who are not entitled to derivative status as in the case of an elderly parent of an E-1 alien or a spouse or child of a principal alien classified H already in possession of a valid B-2 visa for whom it may be inconvenient or impossible to apply for the proper H-4 may be issued B-2 visas. Such dependents, however, must be instructed to request consideration from INS for a one year stay upon arrival in the United States. Extensions of stay for the maximum allowable time may also be requested for the duration of the principal alien's nonimmigrant status in the United States.

9 FAM 41.31 N11.5 Aliens Seeking Naturalization Under INA 329

(TL:VISA-268; 04-26-2001)

An alien who is entitled to the benefits of INA *322 or INA* 329*,* and who seeks to enter the United States to take advantage of such benefits may be classified B-2 without having to meet the foreign residence abroad requirement of INA l01(a)(15)(B).

9 FAM 41.31 N11.6 Dependents of Alien Members of U.S. Armed Forces Eligible for Naturalization under INA 328

(TL:VISA-14; 8-30-88)

a. Alien dependents of an alien member of the U.S. Armed Forces who qualifies for naturalization under INA 328 and whose primary intent is to accompany the spouse or parent on the service member's assignment to the United States. The further possibility of adjustment of status need not necessitate a "denial of visa" under INA 214(b). A dependent of an alien service member who is refused a visa under INA 214(b) as an intending immigrant must be referred to the INS office having jurisdiction over the dependent's place of residence for parole consideration under INA 212(d)(5).

b. Since the purpose of parole in these cases is to serve humanitarian interests it is not appropriate for an alien dependent to seek parole from INS to enter the United States while the service member served a tour of duty outside the United States.

9 FAM 41.31 N11.7 Aliens Destined to A Vocational or Recreational School

(TL:VISA-268; 04-26-2001)

An alien enrolling in such a school may be classified B-2 if the purpose of attendance is recreational or vocational. When the nature of a school's program is difficult to determine, the consular officer shall request the INS for the proper classification of the program and whether approval of Form I-20, Certificate of Eligibility, will be more appropriate.

9 FAM 41.31 N12 Lawful Permanent Resident Issued Nonimmigrant Visitor Visa for Emergency Temporary Visit to the United States

(TL:VISA-14; 8-30-88)

A lawful permanent resident may, in some cases, need to get a visa more quickly than obtaining a returning resident visa would permit. For example: a permanent resident alien employed by U.S. corporation is temporarily assigned abroad but has necessarily remained more than one year and may not use Form I-151 or Form I-551 in order to travel to the United States for an urgent conference and then return abroad. The alien has never relinquished permanent residence, has continued to pay U.S. income taxes, and perhaps even maintains a home in the United States. The alien may be issued a nonimmigrant visa for this purpose and Form I-151 or Form I-551 need not be surrendered. The relinquishment of either of these forms shall not be required as a condition precedent to the issuance of either an immigrant or nonimmigrant visa unless INS has requested such action.

9 FAM 41.31 N13 Authority to Classify Certain Visas "B-1/B-2" and Amount of Fees to be Collected

(TL:VISA-268; 04-26-2001)

a. Consular officers may properly issue B1/B2 visitor visas to aliens who are registered for immigration, if the officer is satisfied that the alien's intent in seeking entry into the United States is to engage in activities consistent with B-1/B-2 classification for a temporary period and that the alien has a residence abroad which he or she does not intend to abandon. While immigrant visa registration is reflective of an intent to immigrate, it

may not be proper for the consular officer to refuse issuance of a visa under INA 214(b) solely on the basis of such registration, unless the consular officer has reason to believe the applicant's true intent is to remain in the United States until such a time as an immigrant visa becomes available.

b. Also eligible for B-1/B-2 visas are qualified applicants whose principal purpose for visiting the United States at various times falls within the B-1 or B-2 category.

c. When the fee prescribed in the appropriate schedule of Appendix *C* is not the same for each classification, the higher of the two fees must be collected.

9 FAM 41.31 N14 Procedures for Obtaining Social Security Cards

(TL:VISA-268; 04-26-2001)

a. The Department, the INS and the Social Security Administration have agreed that certain nonimmigrant aliens who are coming to the United States for the purpose of pursuing certain employment activities incidental to the aliens' professional business commitments, and who will receive remuneration or salary from sources in the United States, may apply for a social security card. Although for immigration purposes these activities might not constitute "employment in the United States," even with a U.S. source of income, the activities might be considered "employment" for other purposes or by other agencies, such as the *Internal Revenue Services (*IRS*).* In order to qualify for a social security card the employee must have the B-1 visa annotated to identify the employer for whom the employee will be working in the United States and the applicable 9 FAM reference. This annotation will enable the Social Security officer to quickly identify these aliens as being eligible for issuance of a working social security card which in turn will enable the employer and employee to comply with legal requirements such as participation in the social security fund, IRS tax payments, workmen compensation and any other work related requirements. [See sec. 9 FAM 41.113 PN8 for the appropriate visa annotation.]

b. Personal or domestic servants of U.S citizen employers or nonimmigrant employers who classifiable B-1, E, F, H, I, J, L, M, *O, P, or Q* provided they meet the criteria under 9 FAM 41.31 N6.

c. Airline employees who because of their visa classification and the nature of their work are authorized to be employed and receive compensation in the United States. [See 9 FAM 41.31 N7.]

d. Visiting Ministers in B-1 visa category who are engaged in an evangelical tour and are supported by offerings contributed at each evangelical meeting. [See 9 FAM 41.31 N6.1.]

9 FAM 41.31 N15 Consular Officer Notations on Nonimmigrant Visas

(TL:VISA-14; 8-30-88)

Notations on nonimmigrant visas regarding the purpose and duration of stay are encouraged when the visas are limited and when the use of such notations would be helpful to INS inspectors or consular officers when processing future visa applications. Positive notations such as:

VISIT UNCLE SAN FRANCISCO THREE WEEKS

are helpful and are authorized. However, endorsements of a negative type such as:

NO ADJUSTMENT OF STATUS OR EXTENSION OF STAY RECOMMENDED

or any other notation which tends to tell INS what to do or which questions the alien's veracity are not allowed.

9 FAM 41.31 N16 Maintenance of Status and Departure Bonds

(TL:VISA-268; 04-26-2001)

See sec. 9 FAM 41.11 and 9 FAM 41.11 PN*1.*7.

9 FAM 41.31 N17 Border Crossing Identification Cards

(TL:VISA-14; 8-30-88)

For instructions concerning processing of applications for border crossing identification cards by posts in Mexico, see 9 FAM 41.32

9 FAM 41.31 N18 Issuance of Two-entry Visa in Lieu of Reciprocal Single-entry Visa

(TL:VISA-268; 04-26-2001)

See sec. 9 FAM 41.112 N*5.*

9 FAM 41.31 N19 Residence Abroad

(TL:VISA-14; 8-30-88)

See sec. 9 FAM 41.11 N2.

9 FAM 41.31 N20 Classification Choice

(TL:VISA-14; 8-30-88)

See sec. 9 FAM 41.11 N3.